

In The Matter Of:

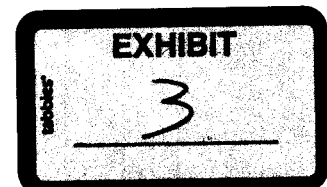
*PADILLA v.
MAERSK LINE*

*JOHN PADILLA
March 26, 2008*

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[1] **Padilla**
[2] picked up a hundred-pound bag of rice and two
[3] metal cans full of oil, which the steward
[4] ordered me to pick them up and put them away.
[5] **Q:** When did this happen?
[6] **A:** What do you mean by when did it
[7] happen? When I was onboard the ship.
[8] **Q:** On what day did you pick up the
[9] hundred-pound bag of rice and two cans of oil?
[10] **A:** I was working overtime. I can't
[11] remember exactly. I can't remember what date it
[12] was.
[13] **Q:** Where was the ship when it
[14] happened?
[15] **A:** We were in Salalah, Oman.
[16] **Q:** How long was the ship in Salalah,
[17] Oman?
[18] **A:** It was there when I got there.
[19] **Q:** Did you join the ship in Oman?
[20] **A:** Yes. I flew out to Oman.
[21] **Q:** How long did the ship stay in Oman?
[22] **A:** I don't know how long it was there
[23] before I got there.
[24] **Q:** You were only on the ship for seven
[25] days?

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[1] **Padilla**
[2] **A:** Seven days, yes. I got on the 30th
[3] of October until November the 6th.
[4] **Q:** So how long after you joined the
[5] ship did the steward ask you to pick up a
[6] hundred-pound bag of rice and two cans of oil?
[7] **A:** About two days. They had just
[8] taken stores on.
[9] **Q:** What was your job on the Maersk
[10] ARKANSAS?
[11] **A:** Chief cook.
[12] **Q:** And your boss was the steward?
[13] **A:** Yes.
[14] **Q:** Was there anybody between the
[15] steward and you, as far as rank?
[16] **A:** No.
[17] **Q:** And who did you supervise?
[18] **A:** I didn't supervise anyone. The
[19] steward supervised the steward department.
[20] **Q:** Does the chief cook have any
[21] supervisory responsibilities over anybody else
[22] in the steward department?
[23] **A:** Well, there's a BR but he is the
[24] one that do the rooms and everything. I haven't
[25] got anything to do with him. He works in the

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[1] **Padilla**
[2] steward department.
[3] **Q:** Tell me who are in the steward
[4] department.
[5] **A:** You have the steward, chief cook
[6] and general steward utility.
[7] **Q:** Is the general steward utility
[8] different from the bedroom utility?
[9] **A:** He does the same thing. He take
[10] care of the rooms and the cleaning of the ship.
[11] **Q:** Am I correct in saying there's only
[12] four crew members in the steward department?
[13] **A:** There's three in the steward
[14] department.
[15] **Q:** Three being the steward, the —
[16] **A:** The steward, chief cook and the
[17] general steward utility.
[18] **Q:** Okay. As the chief cook, it is
[19] your responsibility to prepare the meals,
[20] correct?
[21] **A:** Yes, that's my job, prepare the
[22] meals.
[23] **Q:** Who cleans up afterwards?
[24] **A:** I clean up what I use, the steward
[25] cleans up what he use. See, the steward does

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[1] **Padilla**
[2] breakfast. After breakfast he cleans up
[3] everything he used for breakfast. I do the
[4] lunch and the dinner and I have to clean up
[5] after lunch and after dinner.
[6] **Q:** When you say you do lunch and
[7] dinner, do you set the tables?
[8] **A:** No, the steward utility takes care
[9] of that, that's his job. My job is to cook and
[10] serve.
[11] **Q:** Whose responsibility is taking on
[12] stores?
[13] **A:** The steward, and if he needs any
[14] help, he'll call the cook and he'll call both of
[15] us if he needs any help.
[16] **Q:** Is taking on stores considered
[17] overtime?
[18] **A:** Yes.
[19] **Q:** As a chief cook, do you have
[20] anything that would be called a watch on the
[21] ship?
[22] **A:** No, I have my eight hours a day.
[23] **Q:** So you are a day worker?
[24] **A:** Yes.
[25] **Q:** What were your hours?

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Padilla

[1] **A:** 0630 to 6:30 at night.
 [2] **Q:** What was straight time and what was
 [3] considered overtime?
 [4] **A:** Straight time is Monday through
 [5] Friday — oh, are you talking about overtime?
 [6] **Q:** In other words, how were you paid
 [7] for those hours?
 [8] **A:** I get my overtime three hours a day
 [9] overtime, Monday through Friday, 11 hours
 [10] Saturday and 11 hours Sunday and 11 hours on
 [11] holidays.
 [12] **See,** I work from 6:30 in the
 [13] morning to 9:30 in the morning, then I get an
 [14] hour break, coffee time, then I work up to
 [15] 12:30, then I'm off from 1:00 to 4:00, I come
 [16] back at 4:00 to 6:30, and then I'm off the next
 [17] day.
 [18] **Q:** Even though you are off from 1:00
 [19] to 4:00, are you paid for those hours?
 [20] **A:** If I work, then that's my overtime.
 [21] **See,** I'm off from 1:00 to 4:00, so instead of
 [22] going out, I work my overtime. That's the way
 [23] we get our overtime.
 [24] **Q:** How many hours of overtime do you
 [25]

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Padilla

[1] get a day?
 [2] **A:** Three hours a day. Saturdays and
 [3] Sunday we get 11 hours and the holidays.
 [4] Saturday is eight hours premium and plus three
 [5] hours of working hours.
 [6] **Q:** Is premium different than overtime?
 [7] **A:** Yes, it's a higher rate.
 [8] **Q:** When you were working for Maersk
 [9] Line, Limited in '06, you were working under a
 [10] collective bargaining agreement; is that
 [11] correct?
 [12] **A:** I don't understand what you mean by
 [13] that.
 [14] **Q:** You were a member of a union?
 [15] **A:** Yes.
 [16] **Q:** Was that union the SIU?
 [17] **A:** Yes.
 [18] **Q:** And the SIU has an agreement with
 [19] Maersk Line, Limited.
 [20] **A:** Yes.
 [21] **Q:** And that agreement specified what
 [22] rates you were going to be paid for straight
 [23] time, overtime, premium and penalty; is that
 [24] correct?
 [25]

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Padilla

[1] **A:** Exactly, but now they changed it,
 [2] it is all one rate.
 [3] **Q:** When you say "now," when is now?
 [4] **A:** Since the last new contract.
 [5] **Q:** When was that?
 [6] **A:** Right there (indicating.)
 [7] **Q:** You are pointing to something. You
 [8] may be pointing to the one that you have in your
 [9] pile right there.
 [10] **A:** No. This is June 16, 2001 through
 [11] June 15, 2006. Then we got a new contract June
 [12] 16, 2006 through June 30, 2011.
 [13] **Q:** Let's mark both. But let's mark
 [14] the last one you just talked about as Padilla
 [15] Exhibit 2.
 [16] **A:** That's our new contract effective
 [17] June 2006.
 [18] (Union contract effective
 [19] June 2006, was marked as Padilla
 [20] Exhibit No. 2 for identification, as
 [21] of this date.)
 [22] **BY MR. WALSH:**
 [23] **Q:** Mr. Padilla, I show you what's been
 [24] marked as Padilla Exhibit No. 2 (handing).
 [25]

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Padilla

[1] Is that the union contract that you
 [2] were working under on the Maersk ARKANSAS in
 [3] November of '06?
 [4] **A:** (Perusing document.) 2006, June,
 [5] yes.
 [6] **Q:** Have you seen that contract before?
 [7] **A:** Yes.
 [8] **Q:** Now, you were saying under the
 [9] contract which is Exhibit 2, everything is one
 [10] rate; is that correct?
 [11] **A:** It should be because this one
 [12] should have it, too (indicating).
 [13] **MR. WALSH:** Let's mark this
 [14] one as Padilla Exhibit No. 3 because
 [15] nobody will know what "this one"
 [16] means.
 [17] (Union contract in effect
 [18] from June 16, 2001 through June 15,
 [19] 2006, was marked as Padilla Exhibit
 [20] No. 3 for identification, as of this
 [21] date.)
 [22] **BY MR. WALSH:**
 [23] **Q:** Mr. Padilla, I show you what's been
 [24] marked as Padilla Exhibit No. 3 (handing).
 [25]

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Padilla

(1) Is that a union contract that was
(2) in effect from June 16, 2001 through June 15,
(3) 2006?
(4) A: (Perusing document.) Yes.
(5) Q: Have you seen Exhibit 3 before?
(6) A: Yes.
(7) Q: How long have you been working for
(8) Maersk Line, Limited?
(9) A: Before they even became Maersk
(10) Line. They used to be Sealand and then from
(11) Sealand it became Sea Train, Sea Train then
(12) became Maersk.
(13) And these are my wages
(14) (indicating), this is the overtime rate that I
(15) was making.
(16) MR. WALSH: Let's mark this
(17) as Padilla Exhibit No. 4.
(18) (Two Page document consisting
(19) of Mr. Padilla's overtime sheet, was
(20) marked as Padilla Exhibit No. 4 for
(21) identification, as of this date.)
(22) BY MR. WALSH:
(23) Q: Mr. Padilla, I'm showing you an
(24) overtime sheet that's been marked as Padilla

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Padilla

(1) Exhibit No. 4 (handing), which is a two-page
(2) document and, actually, your overtime sheet is
(3) the second page of that document; is that
(4) correct?
(5) A: (Perusing document.) Yes, the
(6) three hours from Monday through Friday and my 11
(7) hours for Saturday and Sunday and holidays.
(8) Q: What was that overtime rate that
(9) you were being paid?
(10) A: I was getting \$7.16 — I'm sorry, I
(11) have 34 hours, \$21.06 an hour, and I have 34
(12) hours. It totals up to \$716.04, so far that
(13) overtime worked.
(14) Q: I want to show you page 10 of
(15) Exhibit 2 and ask you to take a look at the
(16) overtime rate for chief cook.
(17) Is that \$21.06 per hour?
(18) A: This is the new contract. This is
(19) the new rate.
(20) Q: Right. Is the rate on page 10 as
(21) of July 1, 2006 \$21.06 an hour?
(22) A: 2006 is \$21.06.
(23) Q: For the chief cook?
(24) A: For the chief cook, an hour.

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Padilla

(1) Q: Now, is that \$21.06 in addition to
(2) straight time or is that the rate that you were
(3) being paid?
(4) A: I get my eight hours a day paid.
(5) Anything after eight hours is overtime. This is
(6) after my eight hours.
(7) Q: What was your straight time rate?
(8) A: This is what is on the other
(9) contract, the old contract, which was \$21.06.
(10) Q: You just told me that was the
(11) overtime rate.
(12) A: Right, that's my overtime rate.
(13) Q: So what's the straight time rate?
(14) A: There is no straight time rate.
(15) This is all — it used to be regular overtime
(16) and premium overtime. So they eliminated the
(17) regular and they put it together with the
(18) premium, so it's all one flat rate now.
(19) Q: So if you work eight hours on one
(20) day and an extra three hours overtime —
(21) A: That's 11 hours.
(22) Q: And are you paid the same rate?
(23) A: The same rate, yes. You see, it
(24) used to be before one rate was lower, one rate

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Padilla

(1) was higher, the weekend was higher, right, so
(2) they eliminated that, they put the lower rate
(3) with the higher rate; it's all one rate now.
(4) Q: Was there a time when the first
(5) eight hours you worked you were paid at the
(6) lower rate and the next three hours that you
(7) worked at overtime you were paid at a higher
(8) rate?
(9) A: No.
(10) Q: Was there ever a time that you did
(11) that?
(12) A: No. I got one solid rate. That's
(13) what I was getting, one solid rate.
(14) Q: But before that.
(15) A: Years ago you are talking about?
(16) Q: Yes, years ago.
(17) A: Yes. We used to have two rates.
(18) Say, anything after 6:30 at night would be
(19) regular overtime, right, anything Saturday,
(20) Sundays or holidays would be premium, it doesn't
(21) matter how many hours you worked, it would go in
(22) the higher rate.
(23) Q: Now it's all one rate?
(24) A: Now it's all one rate. There is no

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Padilla

[1]
[2] regular and premium. Now it's all premium. One
[3] rate altogether. Like the three hours we used
[4] to get regular, which was a lower rate they put
[5] it into the new rate. It's all one rate now; so
[6] the rates would be \$21.06.
[7] Q: Can you tell me why it's called
[8] overtime rates if it's all one rate?
[9] A: Because it's overtime. Anything
[10] after your eight hours of work. See, like, put
[11] it this way: I got a coffee break, a one-hour
[12] coffee break, if I don't take my coffee break
[13] that one hour and I have to do something, work
[14] that one hour, that's one hour overtime I put
[15] down. Do you understand what I'm talking about?
[16] That's my time off. They want me to work it, so
[17] they will pay it.
[18] Q: I understand the concept of
[19] overtime.
[20] What I'm not getting is: Is there
[21] anything called straight time pay?
[22] A: You get your regular eight hours
[23] straight.
[24] Q: But it's the same rate as the
[25] overtime pay?

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Padilla

[1] A: No.
[2] Q: What's the rate for straight time?
[3] A: Okay. Your day is paid, it's a
[4] hundred and something dollars a day. It should
[5] be in the contract there.
[6] Q: So you are paid on a per day rate?
[7] A: Per day yes. For every day that
[8] you work, you get paid for that day. Any
[9] overtime you do on that day, you get paid for
[10] the overtime for that day.
[11] Here is what I'm trying to explain
[12] to you right here. See it? This is from Monday
[13] through Friday. Then you have Saturday and
[14] Sunday, which is a different rate. It's 11
[15] hours. You see, instead of three hours, you get
[16] your eight hours for Saturday and plus your
[17] three that you worked that day. So that would
[18] be 11 hours Saturday and 11 hours Sunday. And
[19] then Monday you come back automatically for
[20] three hours.
[21] Q: So from Monday to Friday you are
[22] paid a day rate plus whatever your —
[23] A: Your three hours a day, right,
[24] exactly.
[25]

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Padilla

[1]
[2] Q: On Saturdays and Sundays you are
[3] not paid a day rate, you are paid overtime per
[4] hour?
[5] A: No. You get your days paid plus
[6] your overtime. There's a premium overtime.
[7] Q: So you get a day's pay for Saturday
[8] and Sunday?
[9] A: Right.
[10] Q: Plus 11 hours overtime?
[11] A: Exactly.
[12] Q: Would you be able to spot for me in
[13] the collective bargaining agreement where the
[14] day rate is?
[15] A: Sure. All you have to do is look.
[16] Let me see where it says it here.
[17] (Perusing document.) You want to
[18] check page 39?
[19] Okay, page 42, it tells you your
[20] wages for the month.
[21] Q: And you are looking at Exhibit 3?
[22] A: Right.
[23] Q: Which is the old agreement?
[24] A: Yes, the old agreement.
[25] Now, if you look at the new

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Padilla

[1]
[2] agreement on page 42, you see the difference on
[3] the wages.
[4] Q: Let's look at the new agreement.
[5] Looking at Padilla Exhibit No. 2 and I'm looking
[6] at page 50. Is that the wages?
[7] A: That's your wages now a month.
[8] \$3,051.76. We are in 2008, so this would be my
[9] wages now here, \$3,237.61 a month.
[10] Q: What was it in '06?
[11] A: '06 was monthly \$3,051.76. That
[12] was in '06. In '07 it came up \$3,143.31. 2008
[13] it was \$3,237.61 without your overtime. So you
[14] would figure what you make up in that month in
[15] overtime.
[16] Q: Did the steward have overtime on
[17] the ship?
[18] A: The whole steward department gets
[19] overtime. You cannot just work one man and
[20] don't work the other men. You have to work the
[21] whole steward department.
[22] And if you notice, your working
[23] hours are the next page, 0630 to 9:30, 10:30 to
[24] 1:00 o'clock, then you come back at 4:00 o'clock
[25] to 6:30 p.m.

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[1] **Padilla**

[2] Q: Were there ever any days that you
[3] did not work overtime?

[4] A: I never turn overtime down. That's
[5] where you make your money.

[6] Q: Were there any times when you were
[7] on foreign articles where you decided to take
[8] Saturday or Sunday off?

[9] A: I never take Saturday and Sunday
[10] off because that's the day that you make your
[11] money. That's the premium day.

[12] Q: Were there ever any times that you
[13] took Monday through Friday off?

[14] A: I never take it off. I work all
[15] overtime. I never refuse overtime.

[16] Q: Did you ever go ashore?

[17] A: Yes, after my working hours.

[18] Q: Did you ever take a day off when
[19] you went ashore?

[20] A: We are entitled to one day in lieu
[21] off, but I take that when I come back to the
[22] States. I never take it overseas.

[23] Q: When you say in lieu of —

[24] A: You take one day off in lieu of 30
[25] days of work straight. That's in our

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[1] **Padilla**

[2] department.

[3] Now, in a different department,
[4] they give you that one day off, you can take
[5] four hours here and four hours in another port.
[6] That's considered your day off.

[7] Q: It's a paid day off?

[8] A: We have it as a day paid, we get
[9] the day off plus the day's pay, because they
[10] send — the union send guys to cover for us, the
[11] job for us.

[12] Q: And when you get the day off,
[13] what's the day's pay?

[14] A: The same thing.

[15] Q: When you say the same thing, what
[16] do you mean?

[17] A: The same day's pay.

[18] Q: Is the monthly rate divided by
[19] days?

[20] A: Whatever you make that day, that's
[21] what you are going to get paid. Let's say you
[22] make \$120 today and you had your day off, you
[23] are getting \$120 for that day.

[24] Q: Does it include overtime?

[25] A: No, you don't get overtime because

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[1] **Padilla**

[2] you are not working, you are off.

[3] Q: I'm just looking in the agreement
[4] to see where the day's pay is.

[5] Do you know where in the agreement
[6] it is?

[7] A: It should be in the — I'll find it
[8] for you. It goes by the group that you are in.
[9] You have a group one, group two, group three.

[10] In group three you get the lower pay. The
[11] steward makes, say, in overtime 20-something
[12] dollars, \$24 or \$25 an hour, something like
[13] that.

[14] Q: What group were you in?

[15] A: Group one.

[16] Q: Was the steward also in group one?

[17] A: Yes. The cook and steward is group
[18] 1. The steward utility is group 3. He's an
[19] entry level. You'll find it in the steward
[20] department job. You have deck engine and
[21] steward. It's in there somewhere. We have a
[22] thing called perimating of overtime. You can't
[23] perimate overtime during your working hours.

[24] Q: What does perimating overtime mean?

[25] A: You cannot do any overtime during

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[1] **Padilla**

[2] your eight hours of work. Like, say, during
[3] your working hours like, say, 11:30 to 12:30,
[4] that's my working hours, I can't do no overtime
[5] on that, because that's called perimating
[6] overtime. I have to do it on my time off.

[7] Okay. Here it is (indicating).

[8] Q: You are pointing to Exhibit 3.

[9] A: See, they have different, this is
[10] what I'm talking about, what you are getting,
[11] group one gets this (indicating), it's 21
[12] something an hour.

[13] Q: You are pointing to page 14 on
[14] Exhibit 3, and under section 32, the longshore
[15] work by crew.

[16] And you are showing that to me as
[17] an example of what group one and group two is
[18] being paid?

[19] A: Yes, this is what I would be
[20] getting if I was working longshoreman, but this
[21] is not mine.

[22] Okay, for instance, say 11:30 to
[23] 12:30 it's meal time, anything after 12:30 is
[24] considered a late meal. A guy comes in at a
[25] quarter to one, that's overtime. That's one

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[1] Padilla

[2] Q: And how much?

[3] A: Whatever I was making, my day's

[4] pay.

[5] Q: Including overtime?

[6] A: With your overtime.

[7] Q: Seven days a week?

[8] A: Yes.

[9] Q: So it was not the monthly rate that

[10] was in the collective bargaining agreement?

[11] A: You get your monthly rate plus your

[12] overtime.

[13] Q: How did they calculate what your

[14] overtime would have been?

[15] A: So you figure if you are making \$17

[16] a day, you put 17 times 30, right, plus you are

[17] getting \$17 out of 11 hours to \$17 an hour.

[18] Do you understand what I'm talking

[19] about?

[20] Q: I understand what you are saying.

[21] So AT&T decided to pay you overtime

[22] what you normally would make in overtime on the

[23] ship?

[24] A: That's what I know of. That's what

[25] I got my overtime wages and all.

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[1] Padilla

[2] Q: When Maersk Line, Limited paid you

[3] unearned wages, did you get your overtime?

[4] A: They didn't pay me my overtime.

[5] Q: When did you notice that you were

[6] not getting overtime?

[7] A: If you look at the records here,

[8] she was only sending me my wages monthly.

[9] Q: And she was who?

[10] A: Carol Berger.

[11] Q: Did you give Carol a call and say

[12] where is my overtime?

[13] A: She said they don't pay overtime.

[14] Q: But you called her?

[15] A: Yes, I told her why didn't I get

[16] paid for my overtime. She says they don't pay

[17] overtime.

[18] Q: When did you call Carol?

[19] A: When I was unfit for duty.

[20] Q: Do you remember what time of year

[21] it was or what month it was?

[22] A: No. When I got my first check for

[23] unfit for duty or unearned wages, I noticed my

[24] overtime was not there, so I gave her a call and

[25] she said we do not pay overtime. I said I don't

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[1] Padilla

[2] know why other companies pay overtime.

[3] Q: Do you know what other companies

[4] pay overtime?

[5] A: It's the law. Even on TV they tell

[6] you, if you get hurt on a job and you cannot

[7] work, you get paid your day's pay plus your

[8] overtime that you would make that day.

[9] Q: I know you testified that AT&T did

[10] it that way. Do you know of any other companies

[11] that did it that way?

[12] A: The only one I know is AT&T. I

[13] don't know about the other companies, if you do

[14] it or not, because you have different contracts

[15] with different companies.

[16] Q: Now, let me go back to when you

[17] boarded the Maersk ARKANSAS in Salalah. Who was

[18] the steward?

[19] A: Richard Higgs.

[20] Q: Can you spell his last name for us.

[21] A: H-I-G-G-S.

[22] Q: Did you know Mr. Higgs before

[23] working?

[24] A: Yes.

[25] Q: How did you know him?

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[1] Padilla

[2] A: I worked with him on other ships.

[3] Q: What other ships did you work with

[4] him?

[5] A: I worked with him on the Sealand

[6] GALVESTON BAY or QUALITY. He got fired there.

[7] Q: What did he get fired for?

[8] A: He brought his wife on board down

[9] the coast without permission, which he cannot

[10] do, and they called the company up and the

[11] company — the captain fired him because he

[12] found his wife in the room, so he fired him.

[13] Then he was fired in another job at

[14] Sealand. He got caught stealing meats from the

[15] ship and I think he was kicked out of Sealand

[16] for a while.

[17] Q: It looks like he got back in.

[18] A: I don't know how he got back in

[19] because he started working — in the last time I

[20] seen him, he was working with Hess ITBs. That's

[21] the last time I seen him, I seen him in St.

[22] Croix to now when I went on the ship now.

[23] Q: When he asked you to lift some rice

[24] bags, where were the bags, where was he asking

[25] you to take them from?

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Padilla

[1] because I had just taken stores, which they told
[2] me straighten up this here. He say we are going
[3] to work in the dry storeroom this afternoon. I
[4] said okay.
[5] **Q:** When you say you just had taken
[6] stores, what do you moan?
[7] **A:** The stores came in before I got
[8] there. In order words, when you take stores you
[9] haven't got time to put everything away. So
[10] that's where we make our overtime. On our time
[11] off we go work the stores. That's what I was
[12] referring to as perimating overtime. You cannot
[13] work as stores when you are working regular
[14] hours. That's perimating.
[15] **Q:** Right before you did this job, what
[16] were you doing?
[17] **A:** We had finished lunch.
[18] **Q:** So this job happened right after
[19] lunch?
[20] **A:** After lunch, yes.
[21] **Q:** And was that the first job that you
[22] were going to do in overtime?
[23] **A:** Yes, because, you know, I get my
[24] three hours for like cleaning sougeeing,
[25]

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Padilla

[1] cleaning the galley, the area. Now the stores
[2] are something different, I get my three hours
[3] just for maintaining of the galley, keeping it
[4] clean, if anything is wrong let the steward
[5] know.
[6] In other words, say something broke
[7] and I can't tell the chief, hey, chief, I need
[8] this. I have the tell the steward. He is the
[9] head of the department. He is the one that got
[10] to go tell the steward and report it.
[11] **Q:** Does there come a time of day
[12] normally on the Maersk ARKANSAS where the
[13] steward tells you what overtime job you were
[14] going to be working?
[15] **A:** Yes.
[16] **Q:** When does that happen?
[17] **A:** You could be working, he'll tell
[18] you like say we're working during the working
[19] hours, we working this afternoon after lunch we
[20] are going to go work in the stores. He already
[21] told you what you are going to do for that. If
[22] you tell him no, he can tell you, okay, you
[23] refuse overtime, so in other words, the rest of
[24] the time that you are on the ship, he don't have
[25]

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Padilla

[1] to call you for overtime.
[2] **Q:** So all you have to do is refuse
[3] once?
[4] **A:** Yes.
[5] **Q:** And he can refuse to call you out?
[6] **A:** You can tell the captain, Captain,
[7] I asked him to work overtime, he told me no.
[8] The captain says well, the rest of the trip, no
[9] overtime for him. And that's where you make
[10] your money at, on your overtime.
[11] **Q:** Have you ever seen a seaman refuse
[12] overtime?
[13] **A:** Yes. I seen a lot of them because
[14] they want to go ashore.
[15] **Q:** Have you ever seen a seaman who
[16] refuses overtime to go to ashore not getting any
[17] overtime for the rest of the voyage?
[18] **A:** Yes, I've seen that. A lot of ABs
[19] in there. All you have to do is tell the guy
[20] one time I don't want overtime. Okay, he'll
[21] tell the captain he don't want overtime. Okay,
[22] we'll get somebody else to work the overtime,
[23] you understand.
[24] Then once a week you have to turn
[25]

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Padilla

[1] in your overtime to the captain, and he gets his
[2] orders from the captain. If the captain tells
[3] him I want you to work the stores, straighten
[4] these up here, so that's our overtime. The
[5] captain, the master, is the one that approves
[6] the overtime.
[7] **Q:** Is it your understanding that the
[8] steward has to give you overtime?
[9] **A:** It's not the steward. It's the
[10] captain.
[11] **Q:** Let me re-ask the question, then:
[12] Is it your understanding that the captain has to
[13] give you overtime?
[14] **A:** Well, put it this way, if you take
[15] stores and they put them in the middle of a
[16] passageway where people go in and out and you
[17] don't take care of that, somebody is going to
[18] come along, get hurt and then it's going to be
[19] worse for you.
[20] **Q:** I understand it's a good idea to
[21] have overtime and for a well-run ship you need
[22] over time.
[23] **A:** Right, to eliminate any accidents
[24] or anything, you clear everything out. You put
[25]

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Padilla

[1] everything in its place where it belongs, you
[2] secure it and everything, because in the middle
[3] of the night in the storm and if you ain't got
[4] your glasses secure, when you come down in the
[5] morning you are going to have honey and
[6] everything all over the place.
[7] Q: Let me ask you this: Technically,
[8] is it possible for the captain to run the ship
[9] without giving anybody overtime?
[10] A: No. The captain, he's not going to
[11] come down and put everything away, he's getting
[12] \$187 an hour. He's going to tell you I'm giving
[13] you an order, go down there and straighten this
[14] up, get your department to straighten it up.
[15] Like he'll go to the deck department and say I
[16] want this done. The chief mate gives the orders
[17] to the bolson, he gives it to the AB. Like in
[18] the engine room the same thing. Your boss tells
[19] you to do it, you do it.
[20] Q: By the hierarchy?
[21] A: Exactly.
[22] Q: I understand that.
[23] My question is: You are telling me
[24] that the captain will be crazy not to give
[25]

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Padilla

[1] overtime because it would be an unsafe ship; is
[2] that right?
[3] A: Yes.
[4] Q: But suppose we had a captain who is
[5] crazy enough to do that, do you have a legal
[6] right to get overtime on the ship? In other
[7] words, if the captain said I want no overtime,
[8] do you have any legal right to go and sue him
[9] for the overtime?
[10] A: No, no, no. Here is the way it
[11] works: The captain, he wants to cover his butt,
[12] he doesn't want no accidents or anything so he
[13] goes to every department, he'll tell the chief
[14] engineer look, I want this, the chief mate, I
[15] want this, the steward, I want this. He talks
[16] to the head departments.
[17] My boss is the steward. I have to
[18] do what he tells me. It he tells me go move
[19] this over there, I have to do that, that's my
[20] job, right. Now, he don't tell me go move it,
[21] hey, you don't tell me to go move it, I'm not
[22] going to go on my time off and clean out a
[23] freezer, which when you takes stores, you'll be
[24] surprised, that gets loaded and they put it in
[25]

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Padilla

[1] the wrong places and you have to like when you
[2] are in a freezer you want to know exactly here
[3] is my ground beef, here is my pork, here is my
[4] beef, here is my lamb. You set everything where
[5] you know exactly where it is.
[6] Q: You want to organize.
[7] A: Yes. You know exactly where
[8] everything is at so when he comes down to take
[9] inventory of what he needs, all he do is ground
[10] beef, I got so much, pork I got so much.
[11] He takes an inventory of everything
[12] in its place, which is better than having tomato
[13] cans here and corn over there. You put all the
[14] cans with the cans, all the glasses you put on
[15] the bottom so they don't be flying. But you be
[16] surprised, you know. You cannot do overtime
[17] unless the master approves it. It's in the
[18] contract.
[19] MR. O'BRYAN: Can I ask you
[20] one question?
[21] MR. WALSH: Sure.
[22] MR. O'BRYAN: Is there any
[23] overtime that's automatic that you
[24] do every week, week in and week out,
[25]

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Padilla

[1] like on Saturdays or Sundays or
[2] anything like that?
[3] THE WITNESS: Yes. You have
[4] in the galley my job. My overtime
[5] is to keep the galley clean. That's
[6] my three hours a day. Today say I
[7] do this, tomorrow I do the grill.
[8] MR. O'BRYAN: So there is
[9] mandatory and discretionary
[10] overtime?
[11] THE WITNESS: Exactly. The
[12] Board of Health comes in there and
[13] he walks in the galley and see all
[14] this grease and everything, they are
[15] not going to get on me, they are
[16] going to get on the captain and they
[17] could fine him. The Board of Health
[18] will come in, they will put a
[19] sticker on the ship, ain't going
[20] nowhere. The company is going to be
[21] losing thousands. So he wants
[22] everything clean.
[23] BY MR. WALSH:
[24] Q: You agree with your lawyer on the
[25]

<div>Page 93</div> <div><p>[1] Padilla</p><p>[2] difference between mandatory and discretionary</p><p>[3] overtime. What's the difference?</p><p>[4] A: Well, put it this way, when you get</p><p>[5] on the ship they ask you, you ask them what's</p><p>[6] the overtime on here, do you get three hours a</p><p>[7] day for doing this. You take care of your</p><p>[8] galley, I take care of the inventory, he takes</p><p>[9] care of counting the linen, bagging the linen,</p><p>[10] there's something for every day for you to do.</p><p>[11] They just don't want you sitting around doing</p><p>[12] nothing, especially where you have a seat.</p><p>[13] Q: So there's certain jobs in the ship</p><p>[14] that are considered to be overtime jobs?</p><p>[15] A: Exactly.</p><p>[16] Q: And each ship is different?</p><p>[17] A: All the ships are the same.</p><p>[18] Q: All the ships are the same?</p><p>[19] A: Exactly.</p><p>[20] Q: And you mentioned that cleaning the</p><p>[21] galley and inventory are overtime jobs.</p><p>[22] A: Inventory for the steward is</p><p>[23] overtime. He has got to go in there on his time</p><p>[24] off and order what he needs.</p><p>[25] Q: Cleaning the galley is overtime?</p></div>	<div>Page 95</div> <div><p>[1] Padilla</p><p>[2] economize and say I need to save some money,</p><p>[3] overtime is now going to be two hours a day, can</p><p>[4] he do that?</p><p>[5] A: Yes. But a lot of captains never</p><p>[6] do that because then he knows they are going to</p><p>[7] slack down on you, oh, he is cutting me an hour</p><p>[8] off, no way, that's what the people say they</p><p>[9] don't want overtime. They keep it at a budget</p><p>[10] like 33 percent or 40 percent for each guy.</p><p>[11] They keep it at a percentage, so you can't go</p><p>[12] over the budget. Do you understand what I'm</p><p>[13] talking about?</p><p>[14] Q: I do.</p><p>[15] A: He can't come and tell me after the</p><p>[16] whole trip is almost over no, more overtime for</p><p>[17] you, okay, captain, the ship is going to go in</p><p>[18] dirty. You have to sougee, you have to strip</p><p>[19] and wax. I have to take that grease off of</p><p>[20] there. I have to change that grease. You don't</p><p>[21] want me to do it, it says like that.</p><p>[22] Q: On the Maersk ARKANSAS, you are</p><p>[23] telling me that the normal overtime was three</p><p>[24] hours a day, 11 hours Sundays and Sundays and</p><p>[25] holidays?</p></div>
<div>Page 94</div> <div><p>[1] Padilla</p><p>[2] A: Cleaning the galley after my</p><p>[3] working hours, I have to sougee the galley, guys</p><p>[4] come in with their hands all greasy or the grill</p><p>[5] is dirty. I have to clean it.</p><p>[6] Q: But there is some cleaning at the</p><p>[7] galley that occurs during straight time; is that</p><p>[8] correct?</p><p>[9] A: When I use a pot I wash it. If you</p><p>[10] are going to leave it dirty because you are</p><p>[11] going to need that later, then you have to go</p><p>[12] back and clean that pot.</p><p>[13] Q: It sounds like you are telling me</p><p>[14] that there's certain jobs that are only</p><p>[15] overtime?</p><p>[16] A: Stores are overtime. Sougeeing is</p><p>[17] overtime. Everything is in the contract with</p><p>[18] overtime. On sougeeing there's two things:</p><p>[19] Spot sougeeing and sougeeing are two different</p><p>[20] things. Spot sougeeing for the BR is regular.</p><p>[21] That's automatically a regular job. You see a</p><p>[22] dirty stain, you wipe it. They want you to wipe</p><p>[23] the whole thing, the overheads and everything,</p><p>[24] that's overtime.</p><p>[25] Q: Suppose the captain wanted to</p></div>	<div>Page 96</div> <div><p>[1] Padilla</p><p>[2] A: Every ship, except the one I'm on</p><p>[3] now.</p><p>[4] Q: What's it like on the one you're on</p><p>[5] now?</p><p>[6] A: This one it's five hours a day.</p><p>[7] Q: This is the APL ship, right?</p><p>[8] A: Yes. That's the only good company,</p><p>[9] everybody likes that company because they pay</p><p>[10] two extra hours.</p><p>[11] Q: How do you know that you had a</p><p>[12] hernia after you picked up the rice bags and the</p><p>[13] oil cans?</p><p>[14] A: When I went to the doctor, he told</p><p>[15] me. I just had a physical before I got on the</p><p>[16] ship because we cannot get on the ship unless we</p><p>[17] have a doctor's physical and the doctor gives</p><p>[18] you the card that I showed you before that I'm</p><p>[19] fit for duty, that I can work, that there's</p><p>[20] nothing wrong with me.</p><p>[21] Q: So you had a physical before</p><p>[22] October 31, 2006?</p><p>[23] A: Yes. Once we get a physical it's</p><p>[24] good for the whole year. But when you take a</p><p>[25] job from a company and the company sends you to</p></div>

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Padilla

[1]
[2] the pain go away?
[3] A: He gave me some medicine to take
[4] for the pain. Then after that, the pain went
[5] away.
[6] Q: Has it ever returned?
[7] A: No.
[8] Q: Are you saying that the aortic
[9] aneurysm is related to your service on the ship?
[0] A: I don't understand.
[1] Q: Is there a connection between your
[2] aortic aneurysm and the ship?
[3] A: That it caused or it or something?
[4] Q: That had any relationship to it.
[5] A: I don't know. The doctor just told
[6] me I had an aneurysm and he didn't tell me it
[7] had something to do with it. I can't tell you
[8] that because I don't know. If he would have
[9] told me yes, but he never told me if it had
[0] anything to do with it.
[1] Q: You told me the name of the steward
[2] but I don't know if you told me the name of the
[3] bedroom utility that was on the ship at the
[4] time.
[5] A: I don't remember his name at all.

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Padilla

[1] I've been through so many of them that worked
[2] with me, I really don't remember.
[3] Q: Who was the captain at the time?
[4] A: He's got it written down. It's on
[5] the discharge over here.
[6] Q: Kevin somebody?
[7] A: Kevin something.
[8] Q: Kevin Colon?
[9] A: Yes.
[0] Q: Do you have any opinion about
[1] Captain Colon?
[2] A: Nothing. He just signed my papers.
[3] I never really spoke to him.
[4] Q: Can both the steward and the
[5] bedroom utility get the three hours overtime?
[6] A: Everybody gets it. One guy cannot
[7] get it and the other guy can. If he calls you
[8] for overtime, he also got to call the other guys
[9] for overtime too, because if, not that's
[0] discrimination.
[1] Q: How much do you make annually
[2] about?
[3] A: About 75 or 80.
[4] Q: Did you make less in 2006?

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Padilla

[1]
[2] A: Yes.
[3] Q: What did you make in 2006?
[4] A: I can't remember at the moment.
[5] Q: Do you have your tax returns?
[6] A: At home.
[7] Q: I'll be asking your lawyer for them
[8] at some point.
[9] A: Okay.
[0] Q: Under the SIU agreement you got
[1] vacation pay; is that correct?
[2] A: Yes, we get that.
[3] Q: Do you remember what the vacation
[4] pay was?
[5] A: For that, I don't remember exactly
[6] how much it was.
[7] Q: Was it ever a two-for-one rule?
[8] A: What do you mean two-for-one?
[9] Q: A one-day vacation for two-days'
[0] work.
[1] A: We get 15 for 30.
[2] Q: So if you kept on working on the
[3] ship through your articles?
[4] A: I would have had 120.
[5] Q: 120 days —

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Padilla

[1]
[2] A: For the articles.
[3] Q: Would that have given you 60
[4] vacation days?
[5] A: Yes, if you figure 15 for 30.
[6] Q: When you are on unearned wages, do
[7] you get credit for vacation?
[8] A: Yes. You get your vacation — once
[9] you are unfit for duty and you are aren't
[0] getting unearned wages, they taken out your
[1] benefits. That's your benefits is your
[2] vacation.
[3] Q: So they're treating you as if you
[4] are on vacation?
[5] A: No. They taking out money like if
[6] I'm working. They give me unearned wages but
[7] they are also taking out for taxes, for
[8] vacation, for my benefits and my benefits is the
[9] vacation.
[0] Q: I don't know if I understand that.
[1] A: Say I'm unfit for 120 days. The
[2] vacation is now 60 days. You have to have 60
[3] days to collect vacation. If I'm on 120 days,
[4] that's 120 days vacation that I get.
[5] Q: So the union, the plan gives you

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[1] **Padilla**
[2] vacation for the time that you are off?
[3] **A:** Exactly. While you are unfit for
[4] duty, it counts for vacation time.
[5] **Q:** While you are unfit for duty?
[6] **A:** When you are unfit for duty and
[7] when you are fit for duty. See, like right now,
[8] I'm fit for duty. I go out there, now this trip
[9] I'm gonna make. Now I come back 56 days. I
[10] need 60 days for the vacation. They will not
[11] give you a vacation check until you have 60
[12] days. You have 59 days, you're still not gonna
[13] get it. You have to have 60 days exactly. It
[14] used to be 120. They brought it down.
[15] **Q:** So during your period of unearned
[16] wages, you got credit for vacation?
[17] **A:** Right. Because of my benefits
[18] which they were taken out when I was unfit for
[19] duty.
[20] **Q:** I don't understand when you say
[21] "which were taken out." Normally your vacation
[22] benefits are not deducted from your salary.
[23] **A:** Yes, it is. Say I'm unfit for
[24] duty. For every day I'm unfit for duty, the
[25] company gives in to the contract for your

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[1] **Padilla**
[2] benefits.
[3] **MR. WALSH:** Let's just mark
[4] this whole package.
[5] **A:** It's in the contract.
[6] **Q:** Understood.
[7] **MR. WALSH:** Let's mark this
[8] as 8.
[9] (Packet containing unearned
[10] wages, letter from Carol Berger to
[11] Mr. Padilla, was marked as Padilla
[12] Exhibit No. 8 for identification, as
[13] of this date.)
[14] **BY MR. WALSH:**
[15] **Q:** Can I show you what's been marked
[16] as Padilla 8 (handing).
[17] Is that a letter that you got from
[18] Carol Berger with your unearned wages?
[19] **A:** (Perusing document.) Yes, for 34
[20] days.
[21] **Q:** From what date to what date?
[22] **A:** It says from January 24th to
[23] February 26th; 34 days.
[24] **Q:** And it's your understanding that
[25] the checks she was sending you represented

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[1] **Padilla**
[2] just —
[3] **A:** My wages.
[4] **Q:** Just the per diem, the daily wages?
[5] **A:** Yes. Just the vacation, no
[6] overtime.
[7] **Q:** Right. You said before they
[8] deducted vacation from those amounts. Show me
[9] where they deducted the vacation.
[10] **A:** All you have to do is —
[11] **Q:** On Exhibit 8, did she deduct
[12] anything?
[13] **A:** If you look, I'm supposed to get my
[14] entire wages for the month. She was paying me
[15] monthly only. Well, I have a check here for
[16] \$2,644 for the time of February 8th. Here are
[17] tax wages, what I made, Medicaid tax, medical
[18] checks, Social Security, Federal tax.
[19] So all you have to do is look at
[20] how much I'm supposed to make a month on my
[21] earning wages, and you are going to see it's not
[22] the same as what's in the contract.
[23] **Q:** I understand that.
[24] But I have a very specific
[25] question: Did they deduct any vacation benefits

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[1] **Padilla**
[2] from your unearned wages?
[3] **A:** You see, with this is the company
[4] gives to the union so much money for me when I'm
[5] on vacation, when I'm on shore.
[6] **Q:** I understand that, but they don't
[7] deduct that from your pay, do they?
[8] **A:** What do you mean? I don't know. I
[9] never heard of anything like that.
[10] **Q:** But he was using the word "deduct"
[11] and I'm using his terminology. The record is
[12] going to be very unclear as to what we mean here
[13] unless we understand what we're talking about.
[14] You are saying that the company
[15] pays to the union benefit plan a certain amount
[16] for vacation time; is that right?
[17] **A:** Right. When I get off the ship, I
[18] go and I file for that vacation. That's the
[19] money the company gave to the union for me.
[20] **Q:** Now you are saying that during your
[21] not fit for duty period the company continued to
[22] fund your vacation benefits; is that right?
[23] **A:** That's my benefits. You have to
[24] pay into it.
[25] **Q:** But they didn't deduct it from your